

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

IN RE:  
DISCOVERY IN CRIMINAL CASES

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MISC. NO. 00-308

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**STANDING ORDER 2020-01**

This Order establishes the procedures that apply to the parties' Discovery and Inspection Obligations under Fed. R. Crim. P. 16 and 16.1.

1. **Discovery Conference (Rule 16.1).** The adoption of Fed. R. Crim. P. 16.1 (effective December 1, 2019) underscores the importance of requiring counsel for the Government and the Defendant(s) in criminal cases to confer early in the case with the goal of reaching agreement regarding a timetable and procedures for pretrial disclosure and discovery under Rule 16. Rule 16.1 recognizes the value of allowing the parties the flexibility to tailor these procedures to the needs of a particular case. When the parties are able to do so by mutual agreement, there is no need to involve the Court in the process. When they are unable to do so, however, Rule 16.1 provides a means for the Court to determine or modify the time, place, manner, or other aspects of disclosure and discovery to facilitate preparation for trial. This Standing Order implements Rules 16 and 16.1.

Within 14 days of the initial appearance, or by a date agreed on by the parties, counsel for the Government and the Defendant(s) shall confer and try to agree on a timetable and procedures for pretrial discovery and disclosure under Rule 16 and to agree on the discovery that may be given to the Defendant(s). If they are successful in reaching agreement, they may proceed in accordance with that agreement. If they do not reach agreement, then the procedures set forth in paragraphs two, three, and four of this Standing Order will govern the discovery and disclosure process.

2. **Government's Disclosure:**

- a. Within 14 days of the Rule 16.1 conference, the Defendant shall serve a written request for discovery on the Government ("Defendant's Request"), setting forth the information made subject to disclosure by the Government by Rule 16(a)(1). It shall be organized in accordance with the subsections identified by Rule 16(a)(1)(A)-(G) in such a manner that the Government can readily identify what information is requested by discrete category. Defendant's Request need not be filed with the Court.
- b. Within 21 days of the service of the Defendant's Request, the Government will produce the information requested to counsel for the Defendant, organized in the categories identified by Rule 16(a)(1)(A)-(G). **Counsel for the Defendant may not provide the Defendant with copies of the information produced until the parties have complied with the procedures set forth in paragraph 2.b(i)-(iv) of this Order.** If the Government objects to the production of any of the information requested by the Defendant that is within its possession, custody, and control, it shall describe in writing and with particularity the information that it is not producing as a result of the objection, and state with particularity the basis for the objection. The notice of objection need not be filed with the Court. The Defendant then may respond to this notice of objection in the manner identified in Paragraph 4 of this Order regarding resolution of discovery disputes.
- i. After reviewing the information provided by counsel for the Government (and at reasonable times thereafter if the Government supplements its production), if counsel for the Defendant wishes to provide any of the information to the Defendant for the Defendant's personal possession, counsel shall provide the

Government with written notice of the information produced by the Government that Defendant's counsel proposes to provide to the Defendant ("Defendant's Copies"). This notice will be particularized so that the Government may readily identify the specific information that counsel for the Defendant intends to include in the Defendant's Copies. The notice need not be filed with the Court.

- ii. Within 7 days of receipt of the disclosure of the discovery that counsel for the Defendant intends to include in the Defendant's Copies, the Government will respond in writing by identifying any discovery that the Government objects to having included in the Defendant's Copies. The objection must state with particularity the basis for the Government's objection. The objection need not be filed with the Court. The deadline for serving the objection may be modified by agreement of counsel or by Court order.
- iii. Within 7 days of the Government's notice of objection, counsel will meet and confer in good faith in an effort to resolve any disagreement about the content of the Defendant's Copies. If counsel are unable to resolve the objections, counsel for the Government shall file with the Court a letter (not to exceed 3 single-spaced pages) within 7 days of the meeting, stating with particularity the discovery that the Government objects to having included in the Defendant's Copies, as well as the basis of its objection, and whether it requests the issuance of a Protective Order in accordance with Rule 16(d)(1). If the Government intends to seek a Protective Order, the letter shall state the facts establishing good cause for the issuance of a Protective Order, as Rule 16(d)(1)(A) requires. Within 7 days, counsel for the Defendant may file a written response (not to exceed 3 single-

spaced pages). Unless requested by the Court, no reply by the Government will be permitted.

**iv. Until the Court has ruled on any dispute raised in accordance with Paragraph 2.b(iii), the proposed Defendant's Copies may be shown to, but not provided to, the Defendant, and will be maintained by Defense counsel.**

- c. Discovery produced by the Government to counsel for the Defendant, as well as to the Defendant as part of the Defendant's Copies (whether by agreement of the Government or by order of the Court), may be used only in connection with the defense of this case and may not be provided to any other person except by agreement of the Government or order of the Court, but may be produced by counsel for the Defendant to appropriate persons such as expert witnesses or other individuals directly involved in the Defendant's defense.

**3. Defendant's Disclosure:**

- a. Within 14 days of the Rule 16.1 conference, the Government shall serve a written request for discovery on the Defendant ("Government's Request"), setting forth the information made subject to disclosure by the Defendant by Rule 16(b)(1). It shall be organized in accordance with the subsections identified by Rule 16(b)(1)(A)-(C) in such a manner that the Defendant can readily identify what information is requested by discrete category. The Government's Request need not be filed with the Court.
- b. Within 30 days of the production by the Government required by Paragraph 2.b above, unless otherwise agreed by the parties or ordered by the Court, the Defendant will produce the information requested to counsel for the Government, organized in

the categories identified by Rule 16(b)(1)(A)-(C). If the Defendant objects to the production of any of the information requested by the Government that is within the Defendant's possession, custody, or control and that the Defendant intends to use in the Defendant's case-in-chief at trial, the Defendant shall describe in writing and with particularity the information that it is not producing as a result of the objection, and state with particularity the basis for the objection. The objection need not be filed with the Court. The Government then may respond to this notice of objection in the manner identified in Paragraph 4 of this Order regarding resolution of discovery disputes.

**4. Resolution of Discovery Disputes:**

- a. Counsel for the Government and the Defendant are expected to confer in good faith throughout the pretrial phase of the case with the goal of resolving any disputes regarding discovery and disclosure without the need to involve the Court.
- b. Except as provided by Paragraph 2.b of this Order (which sets out specific procedures to follow in the event of a dispute regarding the discovery that may be included in the Defendant's Copies), if good faith efforts to resolve a discovery or disclosure dispute are unsuccessful, the party that intends to seek an order of the Court to resolve the dispute shall file a letter (not to exceed 3 single-spaced pages) with the Court setting forth the nature of the dispute, the efforts made in good faith to resolve it, and the relief requested from the Court. Within 7 days, the adverse party may file a letter (not to exceed 3 single-spaced pages) setting forth its position with respect to the dispute.

- c. The existence of a dispute regarding the production of discovery or disclosure information shall not be grounds for refusing to produce other requested information that is not subject to the dispute.
- d. The parties are required to follow the procedures of this Paragraph promptly in the event of a discovery or disclosure dispute. Failure to do so may result in a determination by the Court that the party has waived the objection by failure to pursue it promptly.

**5. Expert Witness Disclosures:**

- a. Expert witness disclosures provided in accordance with Rule 16(a)(1)(G) (Government's expert disclosure) and Rule 16(b)(1)(C) (Defendant's expert disclosure) must include all of the information specified by those rules and must be stated with particularity. Boilerplate or conclusory disclosures are prohibited.
- b. If a party objects to the sufficiency of an adverse party's expert witness disclosure, that party shall promptly comply with the discovery dispute resolution procedures set forth in Paragraph 4 of this Order.

- 6. Continuing Duty to Disclose:** As required by Rule 16(c), a party who discovers additional evidence or material before or during trial must promptly disclose its existence to the other party or the Court if: (i) the evidence or material is subject to discovery or inspection under Rule 16, and (ii) the other party previously requested, or the Court ordered, its production.

**7. Statements Made by Prospective Government Witnesses (*Jencks*, 18 U.S.C. § 3500):**

- a. For many years it has been the customary practice in this District for the Government routinely to disclose to the Defendant statements made by prospective witnesses as provided in 18 U.S.C. § 3500 (“*Jencks*”) at least one week before trial to enable counsel for the Defendant to be prepared to cross-examine Government witnesses without the need to ask the Court for a continuance in the trial, unless legitimate concerns about safety and security militated against early disclosure. This practice was wise, fair, and contributed significantly to the effective and prompt trial of criminal cases. It also demonstrated proper respect for the members of the jury by not unnecessarily prolonging the length of jury trials with continuances to enable counsel for the Defendant to prepare for cross examination of Government witnesses.
- b. The Court expects that this practice will continue. If the Government does not intend to follow this practice in a particular case, or if it intends to withhold *Jencks* material for any reason, it shall provide written notice to the Court and counsel for the Defendant not later than the date when the Government is required to make its disclosures as required by Paragraph 2.b of this Standing Order, unless otherwise agreed to by the parties or ordered by the Court.

8. **Disclosures required by *Brady* and *Giglio*:** Although the primary focus of this Order is on discovery and disclosure as provided by Rule 16, in the event that a dispute arises regarding the timing and completeness of Government disclosures required by *Brady* and *Giglio*, the parties will comply with the procedures set forth in Paragraph 4 of this Order, to attempt to resolve the dispute without Court intervention and, if unsuccessful, to promptly bring the dispute to the attention of the Court for resolution.

9. The provisions of this Standing Order may be modified by agreement of the parties or by order of the Court.

February 5, 2020  
Date

James K. Bredar

James K. Bredar, Chief Judge  
United States District Court